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09/742,308	12/22/2000	Maurizio Costantini	1729-400	8180

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 08/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/14/03 308

Applicant(s)

COSTANTINI

Examiner

S. WEINSTEIN

Group Art Unit

1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on 5/9/03
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-12 is/are pending in the application.
- ☐ Of the above claim(s) 9-12 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-8 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☒ All ☐ Some* ☐ None of the:
- ☒ Certified copies of the priority documents have been received.
- ☒ Certified copies of the priority documents have been received in Application No. _____
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 4
- ☐ Interview Summary, PTO-413
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

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Claims 9-12 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a non-elected invention. Election was made without traverse in the response received 5/9/03, paper no. 9.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whetstone (6,099,872) in view of Ferrero (WO 93/01093) or vice versa, i.e., Ferrero in view of Whetstone, both further in view of Bassett (GB. 416,970), Mederer (EP 349,841), Moses (211,420), Boon (2,698,802), and Terrasi (5,782,414).

In regard to claim 1, Whetstone discloses wrapping a food product comprising at least two complementary parts which are coupled substantially freely along a coupling line and positioning the product in the wrapper so that the wrapper retains the complementary edible parts coupled together. Whether two edible parts that are substantially not adhered together stay coupled together is substantially exclusively a function of how tight the wrapper is that surrounds the edible parts and clearly the wrapper of Whetstone functions in this manner. As to whether the wrapper is also present in two complementary parts in Whetstone is not clear. In any case, Ferrero can be relied on to teach it was notoriously well known to provide a wrapper in two parts to wrap a product of the type recited by applicant and taught by Whetstone. To modify Whetstone and provide a wrapper of two complementary parts for its art recognized and

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applicants intended function would therefore have been obvious. As for the recitation that the coupling line is offset from the connection line, if one relies on the tightness of the wrapper to retain the two edible parts coupled substantially freely (i.e., without additional bonding), the edible parts are freely separable and it would not matter where the connection line is relative to the coupling line since just opening the outer wrapper releases the coupling of the edible parts. Whetstone may not have any connection line. Similarly, employing Ferrero as the primary reference, Ferrero employs a wrapper of two complementary parts and an edible of two complementary parts. Claim 1 apparently differs from Ferrero in that claim 1 recites the two edible parts are coupled substantially freely whereas Ferrero is silent in this regard. As noted above, Whetstone can be relied on to teach it was well established to provide an edible in two parts that are freely coupled and to modify Ferrero, if necessary, and substitute one conventional form for another would have been obvious. Geo. Bassett can be relied on as further evidence of substantially free coupling edible parts by employing outer elements (albeit a ribbon or the like) which overlaps the junction edges (page 2, col. 1, para. 1). Note that the function edge would be covered and not adjacent a joint. Mederer can be relied on as further evidence to teach holding together edible parts with an outer casing or wrapper wherein the edible parts can be lightly bonded. Moses also teaches a joint between edible parts covered with a sheet material whereas Boon and Terrasi can be relied on as further evidence of enclosed multipart products include edible products in a wrapper. In regard to claims 2 and 3, the art taken as a whole and specifically Ferrero teaches the conventionality of forming the parts. Also, as noted above, whether the

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coupling and joining lines, if indeed there is a joining line are offset and the geometry of the offset effect is seen to have been an obvious matter of design. At the minimum, the art appears to teach outer wrappers which have no joining line and outer wrappers with joining lines so that the substantially freely coupling line can be associated with continuous surface wrapper (or ribbon) to a joint. However, since the art teaches minimal to no bonding of the edible parts, the outer wrapper (or ribbon) retains the two edible parts together and it would appear that the positioning of an outer joining line would be irrelevant. Applicants disclosure appears to be based on the premise that he was the first to provide minimally to zero bonding of edible parts which is not the case. In regard to claims 5 and 6, the art taken as a whole discusses alternate shapes. In regard to claims 7 and 8, Ferrero teaches flanges and bonding.

The remainder of the references cited on the USPO 892 forms are cited as art of interest.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is 703-308-0650. The examiner can generally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-0661.

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S Weinstein/mn
August 20, 2003

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
8/25/03